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Mimi B. MacDonald
Senior Counsel

Southwestern Bell



October 7, 2002

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

In re: Petition of MCImetro Access Transmission Services, L.L.C., Brooks Fiber Communications of Missouri, Inc., and MCI WorldCom Communications, Inc. for Arbitration of an Interconnection Agreement with Southwestern Bell Telephone Company Under the Telecommunications Act of 1996

Case No. TO-2002-222

Dear Judge Roberts:

Enclosed please find Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company's, Reply to WorldCom's Reply to SWBT's Response to Order Directing Filing and Reply to WorldCom's Reply to SWBT's Reply to WorldCom's Response to Order Directing Filing ("pleading"). SWBT originally filed this pleading on October 2, 2002. However, SWBT inadvertently failed to scan Exhibit A into EFIS. So that there is one pleading that contains both the pleading and the Exhibit, SWBT is making this filing.

If you have any questions, please do not hesitate to contact me. I can be reached at (314) 235-4094.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mimi B. MacDonald", written in a cursive style.

Mimi B. MacDonald

Enclosure

cc: Attorneys of Record

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Petition of MCImetro Access Transmission)	
Services, L.L.C., Brooks Fiber Communications)	
of Missouri, Inc., and MCI WorldCom)	Case No. TO-2002-222
Communications, Inc. for Arbitration of an)	
Interconnection Agreement With Southwestern)	
Bell Telephone Company Under the)	
Telecommunications Act of 1996.)	

**SOUTHWESTERN BELL TELEPHONE, L.P.,
d/b/a SOUTHWESTERN BELL TELEPHONE COMPANY'S
REPLY WORLDCOM'S REPLY TO SWBT'S RESPONSE TO ORDER DIRECTING
FILING AND REPLY TO WORLDCOM'S REPLY TO SWBT'S REPLY TO
WORLDCOM'S RESPONSE TO ORDER DIRECTING FILING**

Comes now Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company ("SWBT") and, for its Reply to WorldCom's Reply to SWBT's Response to Order Directing Filing and Reply to WorldCom's Reply to SWBT's Reply to WorldCom's Response to Order Directing Filing, states as follows:

1. On September 18, 2002, WCOM¹ filed its Reply to SWBT's Response to Order Directing Filing. Subsequently, on September 25, 2002, WCOM filed its Reply to SWBT's Reply to WorldCom's Response to Order Directing Filing. SWBT will not reiterate all of the contents of its prior pleadings regarding the Commission's Order Directing Filing. However, in this pleading, SWBT briefly responds to factually inaccurate and misleading statements that WCOM submitted in its September 18th and September 25th pleadings.

2. WCOM claims: "[t]he Commission did not ask the parties to reargue the merits of Attachment 27 of the MCImetro document. The Commission simply referred to the Staff's request that the parties confirm that the language of one section - Section 3.1- is acceptable and technically

¹ MCI WorldCom Communications, Inc. ("MCIWC"), Brooks Fiber Communications of Missouri, Inc. ("Brooks"), and MCImetro Access Transmission Services, LLC ("MCImetro") are collectively referred to as WCOM.

feasible."² Contrary to WCOM's claims, in the Commission's Order Directing Filing, the Commission stated: "in regards to Issue 30, Attachment 27 ABT, Staff requests that the Commission direct the companies to explain why the revised language is now acceptable and technically feasible."³ SWBT properly responded to the Commission's request and has explicitly set forth the reasons that Attachment 27 ABT is neither acceptable nor technically feasible.⁴ If the Commission does not address the fact that Attachment 27 ABT is neither acceptable nor technically feasible now, the issue will ultimately resurface when Attachment 27 ABT cannot be implemented. For these reasons, it would be beneficial for the parties, as well as the Commission, to address this issue now so that Attachment 27 ABT may be implemented. In this way, the resources of the parties, as well as the Commission and its Staff, would be judiciously utilized.

3. WCOM argues that because SWBT submitted Attachment 27 ABT to Staff that "SWBT has confirmed again that it totally agreed with the document that it submitted, including Section 3.1."⁵ Although Section 3.1 is technically feasible, numerous other sections that SWBT outlined in its Response to Order Directing Filing and in its Reply to WCOM's Response to Order Directing Filing are not technically feasible. Since multiple provisions in Attachment 27 ABT are not technically feasible, the whole Attachment cannot be implemented and, accordingly, should not be approved by the Commission. Moreover, despite WCOM's claims to the contrary, SWBT has never taken the position that Attachment 27 ABT is acceptable or technically feasible. SWBT submitted Attachment 27 ABT because it was required to do so by the Commission, and compliance with a Commission Order does not constitute confirmation of the feasibility or acceptability of the Attachment.

² See WorldCom's Reply to SWBT's Response to Order Directing Filing, paragraph 3.

³ See Order Directing Filing, page 2.

⁴ See SWBT's Response to Order Directing Filing, pages 4-6; see also SWBT's Reply to WCOM's Response to Order Directing Filing, pages 5-7.

⁵ See WCOM's Reply to SWBT's Reply to WorldCom's Response to Order Directing Filing, paragraph 3.

4. In WCOM's Reply to SWBT's Response to Order Directing Filing, WCOM states: "[c]ontrary to SWBT's representations, there have been no negotiations, and none are pending, regarding the changes that should be made now in recognition of the Supreme Court decision. Nor did MCImetro ever agree, as SWBT misstates, that such matters should not be resolved now by the Commission."⁶ It is clear from WCOM's Response to Order Directing Filing, that WCOM's local counsel was not aware of an e-mail from WCOM attorney Michael Schneider, responsible for negotiation of the agreement, to SWBT attorney Tracy Turner. In that e-mail, Mr. Schneider states:

Tracy,

We have discussed your proposal below and decline your offer of a multi-state negotiating session on the subject of UNE Combinations.

The 252 process for both Missouri and Texas agreements has been completed. The change in law procedures would be the appropriate vehicle for any changes with regard to UNE combinations in those agreements. Also, as you know, 252 negotiations in Michigan are ongoing.

With that said, we would be glad to look at the language containing meaningful operational details that SBC would propose for UNE combinations in the change in law process, instead of "parroting" the FCC rules. (Emphasis added).

(See e-mail from Michael Schneider to Tracy Turner, dated July 26, 2002, attached hereto and marked as Exhibit A). SWBT notes that WCOM failed to address this e-mail in its Reply to SWBT's Reply to WCOM's Response to Order Directing Filing. The reason is obvious. The parties have already agreed that the Change in Law provisions in the parties' proposed interconnection agreement should be used to address the Verizon decision. That process calls for negotiations between the parties, dispute resolution procedures if negotiations fail and if, and only if, the parties are not able to implement change in law provisions after negotiations and dispute resolution, is either party permitted to bring the issue to the Commission's attention. WCOM seeks to avoid its responsibilities for negotiating and, instead, seeks to convince the Commission to adopt

⁶ See WCOM's Reply to SWBT's Response to Order Directing Filing, paragraph 4.

the very one-sided language that it has proposed. The Commission should not countenance WCOM's behavior and, instead, should direct WCOM to continue the negotiations pursuant to the change in law provisions of the contract. As SWBT has repeatedly stated, to the extent that Verizon may involve a change in law event, SWBT stands willing and ready to negotiate. WCOM's proposed language, however, is not the product of negotiation between the parties and does not accurately apply the Verizon decision to the Interconnection Agreement.

5. Finally, WCOM asks this Commission to make certain that the agreement complies with the reinstated FCC rules regarding UNE combinations.⁷ WCOM relies on an opinion issued by the Ninth Circuit Court of Appeals in US West Communications v. Jennings, No. 99-16247 (September 23, 2002). At the outset, SWBT notes, that for the reasons stated above, the Commission should direct WCOM to negotiate with SWBT to apply any change in law event that WCOM believes should be addressed in the parties' interconnection agreement. SWBT has already rejected the language that WCOM has proposed to the Commission⁸ because it inaccurately applies the Verizon decision and does not contain meaningful operational details. In Verizon, the Supreme Court gave guidance to regulators and carriers as to when and how the FCC rules should apply. Through the process of negotiating, the parties may be able to resolve their differences regarding proposed contract language and could then present a final, conformed interconnection agreement to the Commission for approval that includes provisions related to the Verizon decision. The Commission should reject WCOM's unilateral attempt to bypass the negotiation process by imposing contract language that SWBT is inconsistent with the Verizon decision.


⁷ See WCOM's Reply to SWBT's Reply to WCOM's Response to Order Directing Filing, paragraph 5.

⁸ See Exhibit A.

Wherefore, SWBT prays the Commission approve the proposed, conformed interconnection agreements between: (1) Brooks Fiber Communications of Missouri, Inc. and SWBT; and (2) MCI WorldCom Communications, Inc. and SWBT, which are adoptions of the M2A by Brooks Fiber Communication of Missouri, Inc. and MCI WorldCom Communications, Inc., with the exception of Attachment 18 which was arbitrated/negotiated. SWBT also prays the Commission approve the proposed, conformed interconnection agreement between MCImetro and SWBT, as amended and reflected in SWBT's Response to WCOM's Response to Order Directing Filing and in SWBT's Reply to WCOM's Response to Order Directing Filing, together with any additional and further relief the Commission deems just and proper.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.

BY 

PAUL G. LANE #27011

LEO J. BUB #34326

ANTHONY K. CONROY #35199

MIMI B. MACDONALD #37606

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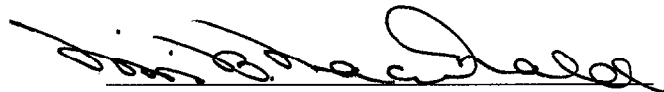
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mimi.macdonald@sbc.com (E-Mail)

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on this 7th day of October, 2002.



Mimi B. MacDonald

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From: Michael Schneider [mailto:Michael.Schneider@wcom.com]
Sent: Friday, July 26, 2002 12:39 PM
To: TURNER, TRACY N (Legal)
Cc: ORRICK, MICHAEL (SWBT); nancy.weiss@wcom.com; MITCHELL, CARLA M (AIT); kathy.jespersen@wcom.com; todd.stein@wcom.com; stephen.morris@wcom.com; 'Freddie Herrera' (E-mail); Jason Wakefield (E-mail); Paul R Collins (E-mail)
Subject: RE: MCImetro - SBC - Missouri, Texas and Michigan - UNE Combinations in Pending Contracts

Tracy,

We have discussed your proposal below and decline your offer of a multi-state negotiating session on the subject of UNE Combinations.

The 252 process for both the Missouri and Texas agreements has been completed. The change in law proceedings would be the appropriate vehicle for any changes with regard to UNE Combinations in those agreements. Also, as you know, 252 negotiations in Michigan are ongoing.

With that said, we would be glad to look at the language containing meaningful operational details that SBC would propose for UNE Combinations in the change in law process, instead of "parroting" the FCC rules.

Thanks.

Michael Schneider
LPP
972.729.6790
972.729.6927 fax

-----Original Message-----

From: TURNER, TRACY N (Legal) [mailto:tt6209@sbc.com]
Sent: Thursday, July 18, 2002 6:06 PM
To: 'michael.schneider@wcom.com'; 'todd.stein@wcom.com'; 'stephen.morris@wcom.com'
Cc: ORRICK, MICHAEL (SWBT); 'nancy.weiss@wcom.com'; MITCHELL, CARLA M (AIT); 'kathy.jespersen@wcom.com'
Subject: MCImetro - SBC - Missouri, Texas and Michigan - UNE Combinations in Pending Contracts

July 18, 2002

Michael,

As we discussed today, I am writing in response to your email message of Monday, July 15, 2002.

SBC-Southwestern Bell would like to negotiate further on the subject of UNE Combinations, somewhat along the lines of your attached contract documents, but we cannot agree to those changes in the Missouri contract without more dialogue and much greater contractual detail.

The UNE Combinations contract edits you proposed on Monday (7/15/02) were the first SBC-SWBT has seen from MCImetro. SBC-Ameritech also received contract proposals regarding UNE Combinations from the MCImetro negotiating team for Michigan, also on Monday (7/15/02). These proposals appear to be attempting to track the language in the FCC's Local Interconnection Rules, 47 CFR 51.315© - (f), now reinstated by the U.S. Supreme Court ruling in Verizon v. FCC, 122 S. Ct. 1646 (May 13, 2002). In the last couple of weeks, SBC-SWBT forwarded its proposal for a post-Verizon v. FCC UNE Combinations section in the Texas contract. That proposal was rejected without counter-proposals or further negotiation, and now sits before the Texas PUC for decision.

SBC believes that our ILEC - CLEC Interconnection Agreements should do more than "parrot" FCC Rules, and should contain meaningful operational details. SBC also believes that the U.S. Supreme Court in Verizon v. FCC did more than just reinstate previously vacated FCC Rules. The Court also gave guidance to regulators and carriers as to when and how those rules should apply. SBC believes that our contracts should conform fully to the existing state of the law, at least until the FCC issues new Rules or Orders on the subject.

I propose that our companies convene a multi-state negotiating session on the subject of UNE Combinations, and consider the various proposals we have now traded back and forth. A joint session covering multiple states would be more efficient and hopefully more fruitful, especially if business and technical subject matter experts joined the call. Toward that end, I have copied each side's negotiating teams for Missouri, Michigan, and Texas, and encourage everyone to consider who at SBC and MCIWorldcom could best deal with these topics and negotiations.

SBC today filed comments at the FCC objecting to the industry's unbundling and combining requirements post-Verizon v. FCC. SBC reserves the right to continue its regulatory positions before courts and commissions on UNE Combinations, but without waiving those positions, is willing to move forward with the negotiations on these subjects under change of law principles.

Feel free to call if you have questions or need further information.